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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,182	02/26/2004	Gary Piaget	2072/US/2	5273

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Nautilus, Inc.
c/o Dorsey & Whitney LLP
370 17th Street
Suite 4700
Denver, CO 80202

EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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08/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/789,182	Applicant(s) PIAGET ET AL.	
	Examiner Steve R. Crow	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-12, 176-179 and 252-266 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 176-179 is/are allowed.
- 6) ☒ Claim(s) 9-12 and 252-266 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election a partial traverse of the election requirement in the reply filed on 4-14-08 is acknowledged.

The traversal is on the ground(s) that additional embodiments and claims are not burdensome; and the grouping of figures 61a,61b,92-94 should be a single species.

Firstly, as applicant can well appreciate, there are a tremendous number of embodiments ,claims and IDSs which have been submitted in this application. Therefore, the examiner strongly disagrees with the applicant's attorney that there has not been a burden upon the examiner. The burden has been excessive.

Applicant asserts that figures 61a,61b,and 92-94 are a single specie.

Accordingly, the examiner is treating these drawings and the claims as a single specie,e.g., as obvious varia **Information Disclosure Statement**

1. The numerous information disclosure statements fail to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because :

Applicant submitted numerous Information Disclosure Statements that comprise over 700 references. It is not clear why all of these references require citation with respect to the disclosed and claimed subject matter. Moreover, the sheer

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number of references burdens the record as to which references are or may be material to which claims.

In accordance with 37 CFR 1.105 and MPEP 704.11(a) subsection (P), applicant is required (1) to provide an explanation as to why each reference has been cited, (2) what specific feature in each reference is pertinent to respective limitations in the claims, and (3) how each reference cited defines over the claim(s) wherein each of (1), (2), and (3) should be meaningfully different. A simple statement that each of the references are relevant will not be sufficient. If applicant deems certain of the references cited to not be relevant, applicant should submit a new IDS containing only references that are pertinent to the examination of this application. In so doing, applicant is still required to provide each of (1), (2), and (3) above. This requirement is reasonably necessary for examination in light of the extraordinary number of cited references by applicant, as noted above. Because the applicant has presumably inspected all of the listed citations, it is reasonable to require the applicant to provide the information needed so that the most relevant citations are fully considered.

It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements

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based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 9 is rejected under 35 U.S.C. 102(a,b) as being clearly anticipated by Reinert.

3. Claim 9 is rejected under 35 U.S.C. 102(a,b) as being clearly anticipated by Kuo.

4. Claim 9 is rejected under 35 U.S.C. 102(a,b) as being clearly anticipated by Piaget (146).

5. Claim 9 is rejected under 35 U.S.C. 102(a,b) as being clearly anticipated by Piaget (539).

6. Claim 9,10,252,255-259,262,263 are rejected under 35 U.S.C. 102(a) as being anticipated by Chang et al.

Chang et al discloses a stepper wherein there is a subassembly which includes elements 141-142 which pivotally attach the treadles to the frame and produce a triangular arrangement.

7. Claims 11-12 are rejected under 35 U.S.C. 102(a,b) as being anticipated by Cossey, Jr. et al.

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Cossey et al discloses all of applicant's claimed invention. Since the body of the claims fail to breathe meaning into the preamble language "An exercise machine", this preamble limitation isn't given any patentable weight.

2. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Magid (489) or Magid (376).

3. Magid (489) shows in figure 8, medial rollers 27 which pass through flanges 24.

Magid (376) shows in figure 6, treadles each having a belt 4, frame, pair of rollers, and flanges 24 on the outer ends of the rollers/belt and rods 411.

4. Claims 9,10,252-256,258 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wiik or Armstrong (067).

5. Claims 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Long et al.

Long et al shows all of applicant's claimed structure. The preamble is not given any weight because it doesn't link to and thereby breathe any limitations in the body of the claims.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 253-254,260-261,264-266 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al.

As stated on record by the applicant in the response filed 4-14-08, the grouping of figures 61a,61b,92-94 should be a single species. Accordingly, claims 253-254,260-261,264-266 are be treated as a single species, and that differences there between are considered as obvious variants.

6. Claims 257,259-266 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiik or Armstrong in view of Speer.

Speer teaches the use of separate shafts, shown in figure 2, for supporting a pair of roller and belt assemblies.

Given this teaching, it would have been obvious to one skilled in the art to modify the Wiik or Armstrong pivoting treadmill devices by providing separate support shafts as an obvious alternative design choice.

As to claims 260 and 266, in agreement with applicant's assertions, it would have been an obvious variant to construct the Wiik or Armstrong treadmill devices with the medial pivot axes aligned parallel with the distal axes.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Max Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sc /Steve R Crow/
Primary Examiner, Art Unit 3764